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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/015,367	12/13/2001	Virgil A.G. Williams	IFF-27	2791

7590 09/29/2003

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[REDACTED] EXAMINER

FUBARA, BLESSING M

[REDACTED] ART UNIT [REDACTED] PAPER NUMBER

1615

DATE MAILED: 09/29/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/015,367	WILLIAMS ET AL.	
	Examiner	Art Unit	
	Blessing M. Fubara	1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 10 July 2003.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-20 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>2 & 5</u> . | 6) <input type="checkbox"/> Other: _____ . |

DETAILED ACTION

Examiner acknowledges receipt of prior art filed 12/13/01, IDS filed 04/30/03 and election filed 07/10/03.

Election Requirement

Applicants elected claims 1, 2, 4, 5, 7-12 and 15-19 for prosecution on the merits depended on species elected. However, the species elected is not clear and is confusing. For example, in claim 3, the icons further comprise ... and thus the claim should have been included in the claims to be examined. The election requirement is thus withdrawn and claims 1-19 are examined.

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

2. Claim 6 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 6 depends on 2 and in claim 2, the additional ingredients are selected from the list while claim 6 contains a mixture of additional ingredients.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has

fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

2. Claims 1-5, 7-18 are rejected under 35 U.S.C. 102(e) as being anticipated by Pesu et al. (US 6,171,560).

Pesu discloses a gel composition comprising deionized water, potassium bitrex solution, disodium EDTA, gellan gum, mica/titanium dioxide, octoxynol 13, alcohol, dipropylene glycol, fragrance oils, Kathon CGICP (column 3, lines 1-50 and column 4, lines 47-55). Octoxynol is surfactant, water is about 79%, fragrance is about 5% and the matrix is 7% in the example in column 3. Structure #40 is equivalent to an icon. The process of making the air freshener in Pesu goes through heating and cooling. The prior art does not have to recognize the mechanism by which a product functions. The issue is the novelty of the product. Pesu teaches the limitations of the claims.

3. Claims 1-4, 6-13 and 16-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Semoff et al. (US 5,679,334).

Semoff discloses a transparent gel air freshener and a method of preparing the air freshener gel; the gel air freshener comprises aqueous gel, a fragrance, a surfactant and a cosolvent and botanicals are suspended in the gel for decoration (abstract). The suspended botanicals are equivalent to icons (see DeStefano et al. US 6,214,063, column 3, lines 44-62 and DeStefano is

Art Unit: 1615

cited for a teaching of botanical icons in a gel). The aqueous gel comprises gellan gum, potassium citrate, fragrance, bitrex, a combination of methylchlroisothiazolinone and methylisothiazolinone microbiocide, surfactant and water (column 3, line 27 to column 7 line 27). Semoff's method of preparing the gel air freshener comprises a chilling step; the chilling step ensures suspension of the botanicals (column 5, line 32 to column 6 line 24). The teaching of Semoff meets the limitations of the claims.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pesu et al. (US 6,171,560).

6. Pesu discloses the air freshener of instant application. Regarding the time period recited in claim 20(i), one having ordinary skill in the art would know how to allow sufficient time for the icon to stay suspended in the body of the gel. Pesu' steps of preparing the air freshener differs from the recited steps. However, selection of any order of mixing the ingredients is *prima facie* obvious in the absence of new or unexpected results (*In re Gibson*, 39 F.2d 975, 5 USPQ 230 (CCPA 1930), *In re Burhans*, 154 F.2d 690, 69 USPQ 330 (CCPA 1946)). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to prepare the air freshener of Pesu. On having ordinary skill in the art would have been motivated to adjust

Art Unit: 1615

the order of performing the steps with the expectation of preparing an air freshener where the icon 40 remains suspended in the gel base.

7. Applicant and the assignee of this application are required under 37 CFR 1.105 to provide the following information that the examiner has determined is reasonably necessary to the examination of this application.

Review of the art including the art submitted by applicants provide no art recognized correlation between air freshener and an algorithm as well as the use of an algorithm for the operation of air freshener. Applicants are required to provide literature reference published prior to applicants' filing date to substantiate art-recognized correlation.

8. The specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicants' cooperation is requested in correcting any errors of which applicants may become aware in the specification.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Blessing M. Fubara whose telephone number is 703-308-8374. The examiner can normally be reached on 7 a.m. to 3:30 p.m. (Monday to Friday).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K. Page can be reached on 703-308-2927. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1234.

Blessing Fubara
Patent Examiner
Tech. Center 1600